

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MATTHEW N. FULTON, DDS, P.C.,
individually and on behalf of all
others similarly situated,

Plaintiff,

v.

ENCLARITY, INC., LEXISNEXIS
RISK SOLUTIONS INC.,
LEXISNEXIS RISK SOLUTIONS GA
INC., LEXISNEXIS RISK
SOLUTIONS FL INC., and JOHN
DOES 1-12,

Case No. 16-CV-13777

District Judge Denise Page
Hood

Magistrate Judge R. Steven
Whalen

PUTATIVE CLASS ACTION

**PLAINTIFF'S MOTION FOR A RULE TO SHOW CAUSE WHY THE
MUSSAT/GARRETT INTERVENTION AND STAY MOTIONS (ECF 47
AND 48) SHOULD NOT BE DENIED AS MOOT OR STRICKEN IN
LIGHT OF THEIR INDIVIDUAL SETTLEMENT IN ILLINOIS**

Plaintiff MATTHEW N. FULTON, DDS, P.C., individually and on behalf of all others similarly situated (“Plaintiff”), by counsel, moves this court for an Order requiring the putative interveners Florence Mussat (“Mussat”), M.D., S.C. and Dr. G. Neil Garrett (“Garrett” and collectively with Mussat, the “Interveners”) to show cause why their motion to intervene (ECF 47) and motion to stay (ECF 48) should not be stricken

and/or denied as moot because the Interveners have settled their claims against Defendants on an individual basis.

In support of its motion, Plaintiff states:

1. This is a putative class action asserting claims under the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.*

2. On September 9, 2020, the Interveners filed their motion to intervene in this case. The Interveners asserted that Mussat is the plaintiff in a “first filed, overlapping putative class action, *Florence Mussat, M.D., S.C. ... v. Enclarity, Inc....*, 16-cv-7643 (N.D. Ill.)” ECF 47 at p. 1 or 20. They also asserted that “Mussat has filed a motion to add Garrett as a plaintiff and class representative in *Mussat*.” *Id.* at p. 2 of 20.

3. The Interveners asserted that they should be allowed to intervene to stay this case because it is a “later filed, overlapping putative class action, that ‘involves the same TCPA claim and the same fax at issue.’” *Id.* The Interveners also filed a stay motion. ECF 48 and 50.

4. On October 29, 2020, the Court issued a notice that it would determine the intervention and stay motions without oral argument. ECF 62.

5. Plaintiff now has learned that on March 31, 2021, Mussat filed a “notice of resolution” in the *Mussat* case to “inform the Court that the Parties have resolved this matter on an individual basis.” *See Mussat*, ECF 133, attached as Exhibit A.

6. Although both the Interveners and Defendants are aware of and parties to an apparent individual settlement of the Intervener claims, they have not advised this court of that fact. In the meantime, the intervention and stay motions are still pending and the Court has stated its intention to decide the motions without oral argument. ECF 62.

7. The fact that the Interveners have apparently resolved their claims “on an individual basis” presumably means that they are no longer involved in a putative class action and have no basis to intervene in this case. Accordingly, it would appear that their intervention and stay motions should be denied as moot or stricken.

8. Pursuant to Local Rule 7.1, Plaintiff has sought the concurrence of both the Interveners and Defendants to the relief requested and has asked them to file an appropriate withdrawal or motion on their own behalf, but has not been able to resolve this motion.

Accordingly, Plaintiff requests that the Court grant this motion and issue an Order requiring the Interveners to show cause why their intervention and stay motions should not be denied as moot and/or stricken.

Dated: May 12, 2021

Respectfully submitted,

By: /s/ Jonathan B. Piper

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 12, 2021, a true and correct copy of the foregoing has been delivered by the Court's electronic filing system to all counsel of record.

/s/ Jonathan B. Piper